No. 80-1168

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

F. LEE BAILEY, GERALD ALCH, AND BAILEY, ALCH & GILLIS,

Cross-Petitioners,

v.

James W. McCord, Jr.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM IN OPPOSITION

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Petitioner (in No. 80-1167) and cross-respondent (herein), James W. McCord Jr., only disagrees with cross-petitioners to the extent that they imply this Court should *only* review the careful, unanimous holding in which the District of Columbia Court of Appeals concluded that the first clause of § 1985(2), Title 42, the so-called Ku Klux Klan Act of 1871, is not restricted by the "invidious discrimination" test of *Griffin v. Breckinridge,* 403 U.S. 88 (1971). See Joint Cross Petition, Appendix, pp. 15a-22a. If the Court concludes that a Writ should be granted, as McCord urges, to resolve the grave questions that have split

the Court of Appeals in this case (See Petition in No. 80-1167), McCord will happily brief and argue the §1985 (2) question fully, and will, with cross-respondents, welcome an authoritative determination of the question here.

But in truth all McCord could add to Judge Tamm's scholarly arguments [that the language is unambiguous, that clause one of §1985(2) grounds in Article III of the Constitution rather than in the Fourteenth Amendment, and that in any event the legislative history of the Act compels the conclusion the Court of Appeals has reached] would be a review of three additional cases, broadening and strengthening the majority interpretation and leaving the errant result of *Jones v. United States,* 401 F. Supp. 168 (E.D. Ark. 1975), aff'd, 536 F.2d 269 (8th Cir. 1976) cert. den. 429 U.S. 1039 (1977), so far afield that it is now universally rejected. Those new cases are: *Bradt v. Smith,* 634 F.2d 796 (5th Cir. 1981); *Williams v. St. Joseph Hospital,* 629 F.2d 448 (7th Cir. 1980); and *Kimble v. D.J. McDuffy, Inc.,* 623 F.2d 1060 (5th Cir. 1980).

Accordingly, the §1985(2) issue provides no independent basis for intercession by this Court.

Respectfully submitted,

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